

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA K. MACKEY and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Clarksburg, WV

*Docket No. 01-984; Submitted on the Record;
Issued December 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of December 20, 2000.

On February 7, 2000 appellant, a 47-year-old program analyst, injured her lower back and right knee when she slipped on an icy surface while walking in a parking lot. She filed a claim for benefits on February 10, 2000, which the Office accepted for lumbosacral and right knee sprain/strain on May 5, 2000. The Office paid her appropriate compensation for temporary total disability.

In order to determine whether appellant currently suffered from residuals of her accepted employment injury, the Office referred appellant for a second opinion examination with Dr. John P. Galey, a specialist in orthopedic surgery. In a report dated September 18, 2000, Dr. Galey noted that appellant stated that, although her right knee condition had resolved, she continued to have complaints of lower back pain. He further stated:

"The established diagnosis of low back pain is based on history only. There are no objective findings to substantiate her subjective complaints. The diagnosed condition is medically related to the work injury by direct cause based on the history that [appellant] gave today. Aggravation of her complaints of back pain are based on the fact that she says when she sits for too long it is sore. This is an actual recognized activity that can exacerbate back pain. I feel that the aggravation based on [appellant's] story will be permanent. The actual material change with regard to her underlying problem shows only the history of [appellant] stating that her back hurts more from sitting. I feel that she does not require any formal medical treatment. I feel that she is capable of performing her duties as described in her job description."

In a report dated October 19, 2000, Dr. F. Clifford Valentin, a specialist in orthopedic surgery and appellant's treating physician, advised that he had reviewed Dr. Galey's

September 18, 2000 report and agreed that there were no objective anatomic findings to substantiate appellant's subjective complaints. He stated, however, that this was true in 85 percent of all cases of back pain and noted that, in his most recent examination, on October 12, 2000 appellant had a history and physical consistent with sacroiliac pain.

On November 22, 1999 the Office issued a proposed notice of termination based on Dr. Galey's opinion that appellant had no residuals or continuing disability causally related to the February 7, 2000 employment injury. The Office informed appellant that she had 30 days in which to submit additional legal argument or medical evidence in opposition to the proposed termination. Appellant did not submit any additional legal argument or medical evidence within 30 days.

By decision dated December 20, 2000, the Office found that appellant no longer had any condition or disability causally related to her employment. The Office found that the weight of the medical evidence, as represented by Dr. Galey's referral opinion, established that her employment-related disability had resolved.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of December 20, 2000.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In the present case, the Office based its decision to terminate appellant's compensation on Dr. Galey's referral opinion. In his September 18, 2000 report, Dr. Galey stated that there were no objective findings to support appellant's subjective complaints of back pain, which were based solely on the history of injury she provided. He concluded that appellant did not require any formal medical treatment and was capable of performing her preinjury job duties. Although appellant submitted Dr. Valentin's October 19, 2000 report noting a history and physical consistent with sacroiliac pain, this did not contain a probative, rationalized medical opinion bearing on the causal relation of appellant's current condition to her accepted employment condition. Dr. Valentin merely stated his agreement with Dr. Galey's opinion that there were no objective findings to substantiate appellant's subjective complaints of back pain and noted that this occurred in 85 percent of all cases of back pain. Thus, Dr. Galey's opinion constituted the only medical evidence of record bearing on the issue of whether appellant had any continuing entitlement to disability compensation.

The Board finds that the Office properly found that Dr. Galey's referral opinion negating a causal relationship between appellant's claimed disability and her February 7, 2000 employment injury and that she no longer had any residuals from the employment injury was

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

sufficiently probative, rationalized and based upon a proper factual background. Accordingly, the Board finds that Dr. Galey's opinion constituted sufficient medical rationale to support the Office's December 20, 2000 decision terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated December 20, 2000 is hereby affirmed.

Dated, Washington, DC
December 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member